Supreme Court, U.S.
FILED

05-666 NOV 22 2005

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No. 05-

IN THE

Supreme Court of the United States

LEATRICE SEINFELD,

Petitioner,

v.

PAUL E. GRAY, JOHN F. MCDONNELL, JOHN M. SHALIKASHVILI, HARRY C. STONECIPHER, JOHN BIGGS, JOHN E. BRYSON, ROZANNE L. RIDGWAY, PHILIP M. CONDIT, KENNETH M. DUBERSTEIN, W. JAMES MCNERNEY, LEWIS E. PLATT, and THE BOEING COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

When a corporation's board of directors solicits stockholder approval of a compensation plan containing stock options and other stock based awards, does the language of 17 C.F.R. § 240.14a-101 Schedule 14A (Item 10(b)(2)(i)(A)) and (Item 20) require the board to state the number of shares underlying such options and other stock-based awards, instead of shares that may be issued, since the regulation uses the word "underlying," and not the word "issued?"

The importance of this question was emphasized on August 10, 2005 by Christopher Cox, the Chairman of the United States Securities and Exchange Commission (SEC), who stated that the control of excessive corporate compensation was the job of the stockholders (and, by implication, not the government's job), but "to do that, they've got to have good information." (29a).

This question addresses one word in the language of a federal regulation that expressly applies when stockholders are solicited to approve stock options, a form of compensation widely used by corporations with publicly traded stock. A stock option confers upon the holder the right to exercise the option by buying the underlying stock in future years at a price that is fixed in the present. The holder exercises the option by buying the underlying stock at a price less than its current market price. If the option is settled in cash, the corporation does not issue the underlying stock. Instead, it pays the holder cash equal to the difference between the market price and the purchase or exercise price.

There are widespread violations of this regulation that have resulted and will result in stockholders' unwitting approval of corporate expenses of billions of dollars.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
TABLE OF CONTENTS	ii
TABLE OF CITED AUTHORITIES	iv
TABLE OF APPENDICES	x
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
STATUTES, RULES, AND REGULATIONS INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE PETITION ...	6
I. Introduction	6
II. The Legal Importance Of The Question ...	7
A. Governing Principles	7
B. The Proxy Statement Must Disclose The Number Of Shares Underlying The Options In The Plan	9

Contents

Page

1. The Meaning Of The Regulatory Word "Underlying" 10

2. The Duty To State A Limit Of Underlying Shares 13

III. The Economic Importance Of The Question 16

IV. This Court Should Exercise Its Supervisory Power 18

CONCLUSION 19

TABLE OF CITED AUTHORITIES

CASES *Page*

Allyn Corp. v. Hartford National Corp., 1982 WL 1301 (D.Conn. March 30, 1982) 13, 14, 15, 16

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Anadarko Petroleum Corp. v. Panhandle Eastern Corp., 545 A.2d 1171 (Del. 1988) 11

Burns v. Barnhart, 312 F.3d 113 (3rd Cir. 2002) .. 9

Caiola v. Citibank, N.A., 295 F.3d 312 (2nd Cir. 2002) 11, 12

Cochran v. Quest Software, Inc., 328 F.3d 1 (1st Cir. 2003) 19

Corn Products Refining Co. v. FTC, 324 U.S. 726 (1945) 6

In re Craftmatic Sec.Lit., 890 F.2d 628 (3rd Cir. 1989) 8

Decker v. Advantage Fund Ltd., 362 F.3d 593 (9th Cir. 2004) 12

Deutschman v. Beneficial Corp., 841 F.2d 502 (3rd Cir. 1988) 11

Cited Authorities

	Page
FTC v. Cement Institute, 333 U.S. 683 (1948)	6
Harff v. Kerkorian, 324 A.2d 215 (Del. Ch. 1974) *aff'd*, 347 A.2d 133 (Del. 1975)	12
Helvering v. Southwest Consolidated Corp., 315 U.S. 194, 62 S. Ct. 546 (1942)	12, 16
Houbigant, Inc. v. Deloitte & Touche, LLP, 753 N.Y.S.2d 493 (1st Dept. 2003)	8
J.I. Case Co. v. Borak, 377 U.S. 426, 84 S. Ct. 1555 (1964)	7
Keeler v. Comm. 243 F.3d 1212 (10th Cir. 2001) ..	11
Kerkhof v. MCI WorldCom., Inc., 282 F.3d 44 (1st Cir. 2002)	11
Laureys v. Comm. 92 T.C. 101, 1989 WL 4225 (1989)	11, 19
Lehman Brothers v. Schein, 416 U.S. 386 (1974) ..	18
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No. 84 Employer Teamster Fund v. America West Holding Corp., 320 F.3d 920 (9th Cir. 2003) ...	8

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Page

Scully v. U.S. WATS, Inc., 238 F.3d 497 (3rd Cir. 2001) 11

SEC v. Yun, 327 F.3d 1263 (11th Cir. 2003) 11

Seinfeld v. Bartz, 322 F.3d 693 (9th Cir. 2003) 19

Seinfeld v. Bartz, 2001 WL 611295 (S.D.N.Y 2001) 19

Shaev v. Saper, 320 F.3d 373 (3rd Cir. 2003) 7, 8, 14

Stoller v. Comm. 994 F.2d 855 (D.C. Cir. 1993) ... 13

Staar Surgical Co. v. Waggoner, 588 A.2d 1130 (Del. 1991) 11

Varghese v. Honeywell International, Inc., 424 F.3d 411 (4th Cir. 2005) 11

Virginia Bankshares, Inc. v. Sandberg, 501 U.S. 1083, 111 S. Ct. 2749 (1991) 8

Western Pacific R. Corp. v. Western Pacific R. Co., 345 U.S. 247 (1953) 18

Wolff v. Comm. 148 F.3d 186 (2nd Cir. 1998) 13

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Page

STATUTES And RULES

8 Del.C § 151 11

15 U.S.C. § 78n(a) 1, 7

15 U.S.C. § 78aa 2

28 U.S.C. § 1254(1) 1

28 U.S.C. § 1291 2

17 C.F.R. § 240.14a-101 Schedule 14A (Item 10(b)(2)(i)(A)) ..... *passim*

17 C.F.R. § 240.14a-101 (Item 10(b)(2)(ii)) ..1, 8, 13, 19

17 C.F.R. § 240.14a-101 (Item 20) 5, 9

SEC Rel. No. 34-1823, 1938 WL 33169 (August 11, 1938) 1, 10, 15

SEC Rel.No. 34-4775, 1952 WL 5254 (December 11, 1952) 1, 10

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Page

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Page

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TABLE OF APPENDICES

Page

Appendix A — Opinion Of The United States Court Of Appeals For The Second Circuit Decided April 14, 2005 ..... 1a

Appendix B — Memorandum And Order Of The United States District Court For The Southern District Of New York Dated May 17, 2004 ..... 12a

Appendix C — Order Of The United States Court Of Appeals For The Second Circuit Denying Petition For Rehearing Filed August 24, 2005 .. 20a

Appendix D — Statutory And Regulatory Provisions Involved 22a

Appendix E — Transcript Of Chairman Cox's Interview Portion On Nightly Business Report On August 10, 2005 ..... 27a

Leatrice Seinfeld petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 404 F.3d 645 (2nd Cir. 2005) and reprinted at petitioner's appendix at 1a-11a. The opinion of the United States District Court for the Southern District of New York dismissing the complaint is not reported. It is reprinted at petitioner's appendix at 12a-19a.

STATEMENT OF JURISDICTION

The Court of Appeals entered judgment on April 14, 2005 and denied our petition for rehearing *en banc* August 24, 2005. (20a-21a). The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES, RULES, AND REGULATIONS INVOLVED

The Securities Exchange Act of 1934, § 14(a), 15 U.S.C. § 78n(a);

United States Securities and Exchange Commission ("SEC") Rules and Regulations 17 C.F.R. § 240.14a-101 Schedule 14A (Item 10(b)(2)(i)) and (Item 10(b)(2)(ii)) and (Item 20)

SEC Release No. 34-4775 (Item 11) (December 11, 1952)

SEC Release No. 34-1823 (Item 9(d)) (August 11, 1938)

These provisions are lengthy and are reprinted in the petitioner's Appendix, at page 22a-26a.